(1)

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. Singh Bench

C.S. 1002

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.NO. 604 /2005

PETITIONER:

[1] Aalekh Kumar Devta
S/O Shri Gautam Devta
Aged about 43 Years
Office- Janpad Panchayat Pussour
Distt. Raigarh.[Chhattisgarh]

VERSUS

P.R. No. 664/05
Presented by Shri M.P. Dhwani
dated 18-02-05

RESPONDENTS:

[1] State of Chhattisgarh
Through Secretary,
Panchayat & Rural Development
DKS Bhawan
Raipur.[Chhattisgarh]

[2] Chief Executive Officer
Janpad Panchayat Pussour
Distt. Raigarh.[Chhattisgarh]

[3] District Collector
Distt. Dhamtari.[Chhattisgarh]

WRIT PETITION UNDER ARTICLE 226 / 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS, CERTIORARI ETC OR ANY OTHER DIRECTIONS OR ORDER TO DO JUSTICE IN THE MATTER.

AFR

18.7.05

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 604 of 2005
Aalekh Kumar Devta

-Versus-

State of Chhattisgarh & others

Writ Petition No. 629 of 2005
Devarchan Satpathi

-Versus-

State of Chhattisgarh & others

Writ Petition No. 600 of 2005
Basant Kumar Sahu

-Versus-

State of Chhattisgarh & others

Writ Petition No. 601 of 2005
Shyamlal Chaudhari

-Versus-

State of Chhattisgarh & others

Post for order on 19th July, 2005.

Sd/-
Satish K. Agnihotri
Judge

18.7.2005

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 604 of 2005

Aalekh Kumar Devta

-Versus-

State of Chhattisgarh & others

Writ Petition No. 629 of 2005

Devarchan Satpathi

-Versus-

State of Chhattisgarh & others

Writ Petition No. 600 of 2005

Basant Kumar Sahu

-Versus-

State of Chhattisgarh & others

Writ Petition No. 601 of 2005

Shyamlal Chaudhari

-Versus-

State of Chhattisgarh & others

Shri Sunil Otwani, Advocate for the petitioners in W.P.No. 604/2005 & W.P.No. 629/2005.

Shri Manoj Paranjpe, Advocate for the petitioners in W.P.No. 600/2005 & 601/2005.

Shri P. S. Koshy, Deputy Advocate General for the Respondents No.1 and 3 in W.P.No. 604/2005 & 629/2005 and for Respondents No. 1 to 3 in W.P.No. 600/2005 & 601/2005.

Shri Yashwant Singh, Advocate for respondents No.2 in W.P.No. 604/2005 & W.P.No. 629/2005.

Shri Sandeep Dubey, Advocate for the respondents No. 4 in W.P.No. 600/2005 & 601/2005

O R D E R
(19.7.2005)

By Justice Satish K. Agnihotri.

1. This order shall disposed of Writ Petitions No. 604/2005, 629/2005, 600/2005 and 601/2005, filed under Articles 226 and

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227 of the Constitution of India impugning the order dated 1.2.2005.

2. The relevant facts necessary for adjudication of the case are that the petitioners in Writ Petitions No. 604/2005 and 629/2005 were appointed as Gram Sahayak (now known as 'Assistant Gram Panchayat Officers') in the District – Raigarh. During their service period on many occasions they were transferred and posted at different blocks of District Raigarh. At present both the petitioners are posted at Janpad Panchayat, Pussor, District- Raigarh. By the impugned order dated 1.2.2005 they have been transferred from Janpad Panchayat Pussor District - Raigarh to District –Dhamtari, from where their posting orders would be issued by the Collector, Dhamtari. Their names are placed at Srl. No. 48 and 49 respectively in the impugned transfer order.

3. The case of the petitioners in Writ Petitions No. 600/2005 and 601/2005 is that they are working as Assistant Gram Panchayat Officers (previously known as 'Gram Sahayaks') at Janpad Panchayat Saraipali, District Mahasamund. By the impugned order dated 1.2.2005 petitioner Shri Basant Sahu has been transferred to District- Koria from where his posting order would be issued by the Collector, Koria, and petitioner Shri Shyamlal Choudhri has been transferred to Janpad Panchayat Bhaiyathan, District- Surguja. Their names are placed at Sr. No. 51 and 52 respectively in the impugned transfer order.

4. The case of all the petitioners are that they are class –III employees, their seniority is being maintained district-wise and they have been transferred to accommodate other persons.

5. Shri Sunil Otwani, learned counsel for the petitioners challenges the impugned order on the ground that the petitioners were

appointed at a particular district, their seniority is maintained district-wise. It is next contention that in case of their transfer from one district to other district their seniority will be affected causing prejudice to the petitioners. He further contended that the next step of promotion is to the post of Sub-Auditor where State gradation list is maintained.

6. Adopting submissions made by Shri Sunil Otwani, Shri Manoj Paranjpe, learned counsel appearing for the petitioners in W.P.No. 600/2005 and 601/2005 stated that 38 officers have been transferred on the basis of their request, and the respondents have accommodated them by transferring other persons including the petitioners.

7. Learned counsel for the petitioners in support of their contentions placed reliance on the decisions reported in 2004 A.I.R. SCW 2082 (State of U.P. & others Vs. Gobardhan Lal), A.I.R. 1994 S.C. 55 (K. Narayanan & others Vs. State of Karnataka & others), A.I.R. 1985 S.C. 482 (Arun Kumar Chatterjee Vs. South Eastern Railway and others), 1994 J.L.J. 479 (Suresh Kumar Sharma Vs. Municipal Council, Ambah & others), and A.I.R.1986 S.C. 1955 (B. Varadha Rao Vs. State of Karnataka & others).

8. On the contrary Shri P. S. Koshy, learned counsel appearing for the respondents/State contended that the impugned order of transfer provides for transfer of 55 Assistant Gram Panchayat Officers (previously known as 'Gram Sahayak') from one district to another district. The petitioners are four of 55 transferred employees. The order was passed by the competent authority after obtaining the assent of the Chief Minister in the process of coordination. It was further contended that the petitioners were posted at previous place of posting for more than 15 to 20 years and their next promotional

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post is Sub-Auditor for which a State seniority list is prepared of the Assistant Gram Panchayat Officers to consider for the next promotion to the post of Sub-Auditors.

9. Learned counsel for the respondents further submits that the circular dated 27.2.1961 and 14.12.1961 clearly provides that the Class-III employees who are appointed on district basis can be transferred to other districts in view of the public service and administrative exigency. It was further contended that there is no prohibition on transfer from one district to other district. The post of Assistant Gram Panchayat Officer is a civil post and transferable from one district to other district. Learned counsel next submitted that the seniority and promotional avenues of the petitioners would not be affected in any case, as the next promotion from the post of Assistant Gram Panchayat Officer is to the post of Sub-Auditor, a State cadre. Their salary; allowances etc. are one and the same. For promotion to the post of Sub-Auditor State Level Seniority list is prepared on the basis of their appointment to the service. In support of his contentions learned counsel placed reliance on the following decisions A.I.R. 2001 S.C. 3309 (National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan & another), (2004) 4 S.C.C. 245 (Union of India & others Vs. Janardhan Debanath & another), (2004) 7 S.C.C. 405 (State of U.P. & another Vs. Siya Ram & another), A.I.R. 1993 S.C. 1236 (Rajendra Roy Vs. Union of India & another), A.I.R. 1993 S.C. 1236 (Rajendra Roy Vs. Union of India & another) and decisions of this Court in L.P.A. 15/2005 (B.P.Sharma Vs. Ferro Scrap Nigam Ltd.) decided on 3.2.2005, Ferro Scrap Nigam Limited vs. B.P. Sharma & Others W.P.No. 2007 of 2004 decided on 06.01.2005 and W.P.No. 1571/2004 (Dr. O. P. Tiwari Vs. State of Chattisgarh & others) decided on 6.5.2005.

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10. Having considered the arguments of learned counsel for the parties and perusing the records, I found that there is no malafide exercise of power in passing the impugned order for transferring 55 Assistant Gram Panchayat Officers including the petitioners. It is admitted fact that there is no prohibition on transfer from one district to other districts. The circulars dated 27.2.1961 and 14.12.1961 clearly provides that the Class-III employees appointed on the district basis can be transferred outside the district in the interest of the public service and on administrative grounds. The present petitioners are Class-III employees. It is also admitted that though the seniority is maintained at district level, however, their seniority is not disturbed on transfer from one district to the other district in view of the fact that the next promoted post is Sub-Auditor and to consider for promotion to the post of Sub-Auditor, the State list is prepared on the basis of their dates of appointments of all the districts. Their monetary benefits, salary, allowances etc. remain one and the same in case of transfer from one district to other district.

11. The reliance of the petitioners on the decision in the case of Arun Kumar Chatterjee (Supra) it is not a case of transfer, as it deals with the seniority of officiating and temporary officers in fixing seniority. The Supreme Court in the case of B. Baradha Rao(Supra), cited by the petitioner, while approving the decision of the Supreme Court in the case of E.P.Royappa Vs. State of Tamil Nadu, A.I.R. 1974 SC 555 has held that a transfer to accommodate another person for undisclosed reason is not just and fair. In the present case it is not a single order which has been passed to accommodate some person. The impugned order transferring 55 persons may be

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some persons are accommodated in the process, as such it cannot be held as vitiated.

In Rajendra Roy's case (Supra) cited by the respondents the Supreme Court has held as under:-

"It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable tobe struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department."

In the case of K. Narayanan & others (Supra) the Supreme Court has held as under:-

"Any person entering the service can justly feel secure of equality in continuance, promotion etc. Any executive action violating it cannot be upheld. Seniority is an incident of service which cannot be eroded or curtailed by a rule which operates discriminately."

In the case of State of U.P. & Another Vs. Siya Ram (Supra) the Supreme Court has further held as under:-

"No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned."

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Again in the case of Union of India & others Vs. Janardhan Debanath & another (Supra) the Supreme Court has held as under:-

"Additionally, it was pointed out by learned counsel for the Union of India that as indicated in the special leave petition itself there was no question of any loss of seniority or promotional prospects. These are the aspects which can be gone into in an appropriate proceeding, if at all there is any adverse order in the matter of seniority or promotion."

"The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other."

In the case of Gobardhan Lal (Supra) the Supreme Court has held as under:-

"8. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power

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or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer / servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

"9. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

This Court following the decisions of Supreme Court in the case of Ferro Scrap Nigam Limited (supra) has held that the transfer was just and proper.

12. In view of the facts and circumstances of the cases, it is clear that in the present cases, seniority of the petitioners

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maintained at District level will not be disturbed after transferring them, because the next post of promotion is Sub-Auditor i.e. State Level Cadre and the consideration of promotion to the post of Sub-Auditor is based on their State level seniority, prepared for the purpose of promotion. The petitioners have further no right to remain posted at a particular district and there is no challenge on the ground of mala fide or violation of any statute, regulation, and rule etc.

13. The position of law, in view of the decisions stated above, is well settled that the Courts should not substitute decisions of the management in case of transfer made on the ground of administrative exigency and in public interest, except in the case of proved malafide in exercise of powers or violation of statutory provisions, and that is not the case in the present matters.

In view of the foregoing, the petitions are dismissed. However, there shall be no order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur